IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 908 of 2003

with

Civil Application No.3105 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GANESHBHAI MULJIBHAI SOLANKI

Versus

BABULAL TRIKAMLAL SONI

Appearance:

1. First Appeal No. 908 of 2003

MR AS SUPEHIA for Petitioner No. 1-2

MR DHIRAJ M PATEL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.H.KADRI

Date of decision: 19/09/2003

COMMON ORAL JUDGEMENT

1. The appellants, original defendants, by filing

this appeal under Section 96 of the Code of Civil Procedure, have challenged the judgment and decree dated January 10, 2003, passed by the learned Judge, Court No.13, City Civil Court, Ahmedabad, in Civil Suit No.1246 of 1997, by which the defendants were directed to demolish the latrine, which was constructed pending the suit, within two months, however, with liberty to construct a latrine upto 3 feet x 3 feet adjoining to their house which opens in the chokdi, and it should not be constructed beyond the gutter line.

2. Heard the learned advocate for the appellant. I have also perused the record and proceedings of Civil Suit No.1246 of 1997, which were called for to decide the appeal at the admission stage.

3. The learned advocate for the appellant has submitted that, initially, the suit was based on easementary rights and, in the absence of any prayer for removal of the latrine, the learned Judge had directed the defendants to demolish the latrine. The submission of the learned advocate for the appellant is devoid of any merit and deserves to be rejected. During pendency of the suit, by way of an interim relief, the defendants were permitted to construct a latrine upto the size of 3 feet x 3 feet near the chokdi shown in the map prepared by the Court Commissioner, and the defendants were directed to keep the opening of the toilet on the chokdi side. In spite of the clear direction of the Court by order dated December 15, 1997, the defendants had constructed the latrine beyond the size of 3 feet x 3 feet. Therefore, the plaintiff had amended the plaint and had prayed that the defendants be directed to remove the construction of the latrine which was in violation of the earlier order dated December 15, 1997. As the defendants had committed breach of the order dated December 15, 1997 during pendency of the suit, the learned Judge was justified in directing the defendants to demolish the latrine which was constructed beyond the gutter line.

4. No other point is raised by the learned advocate for the appellants.

5. As a result of foregoing discussion, I find no merit in the First Appeal and the First Appeal is dismissed with no order as to costs.

6. As the First Appeal is dismissed, the Civil Application is also rejected. The order of status-quo granted earlier is hereby vacated. Notice is discharged

with no order as to costs .

(M.H. Kadri, J.)

(swamy)